IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 1203 of 1999

in

SPECIAL CIVIL APPLICATIONNo 669 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE B.J.SHETHNA
and
Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

STATE OF GUJARAT

Versus

MUNNALAL SUKAI HARIJAN

Appearance:

1. LETTERS PATENT APPEAL No. 1203 of 1999

MR VM PANCHOLI, AGP, for the Appellant.

MR YOGESH S LAKHANI for Respondent No. 1

CORAM : MR.JUSTICE B.J.SHETHNA
and
MR.JUSTICE A.L.DAVE

Date of decision: 04/04/2003

ORAL JUDGEMENT

(Per : MR.JUSTICE B.J.SHETHNA)

1. Admit. Mr. Lakhani waives service of notice of admission for the respondent. At the joint request of learned counsel for the parties, this appeal is heard and finally disposed of today.

2. Against the order dated 3.5.1999, passed by the learned Single Judge of this Court in Special Civil Application No.669 of 1997, the State of Gujarat has filed this appeal.

3. Learned Assistant Government Pleader vehemently submitted that the learned Single Judge was wrong in directing the respondent-present appellant to take the petitioner back in service and consider his case for conferment of benefits as per resolution dated 17.10.1988. He submitted that, in absence of any such prayer made by the petitioner in his petition, no such relief could have been granted. He further submitted that, it was not the case of the respondent-petitioner that his services were terminated. His case before the learned Single Judge in the writ petition was that he was not allowed to resume his work on account of an offence of theft rergistered against him, for which he was, later on, acquitted by the competent criminal Court.

4. There is substance in the submission made by the learned Assistant Government Pleader, Shri Pancholi, for the State of Gujarat. However, the order was passed way back on 3.5.1999, i.e. almost before four years from today, and, as stated by the learned counsel for the respondent at the Bar, pursuant to the order passed by the learned Single Judge on 3.5.1999, the respondent-workman was allowed to resume his duty and, therefore, we would not like to interfere with the order passed by the learned Single Judge.

5. We are fully convinced by the submission of the learned Assistant Government Pleader that, while allowing the petition, the learned Single Judge ought not to have awarded cost of Rs.5000/- to the respondent-petitioner. Even the learned counsel for the respondent was also not able to defend such order of awarding cost of Rs.5000/-. In this view of the matter, the order of the learned Single Judge awarding cost of Rs.5000/- to the respondent-petitioner deserves to be set aside.

6. In view of the above, the appeal is allowed to the extent that the order of the learned Single Judge

awarding cost of Rs.5000/- while allowing Special Civil Application No.669 of 1997 is hereby quashed and set aside. We would not like to interfere with the rest of the order except regarding the resolution dated 17.10.1988, for which the petitioner may make suitable representation to the Competent Authority. We are sure that, as and when such representation is made, the Competent Authority would consider and decide it in accordance with law.

7. In the result, this appeal is partly allowed to the aforesaid extent.

[B.J. SHETHNA, J.]

[A. L. DAVE, J.]

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